

REMARKS

By entry of this amendment, claims 1-16 and 18-24 are pending in this application. Claims 1, 8 and 15 have been amended. In view of the foregoing amendments and following remarks, Applicant respectfully requests withdrawal of the rejections in the Final Office Action, and allowance of the application.

Uninitialed Form PTO-1449

As stated in the previous response, Applicant notes with appreciation the return of the Form PTO-1449 submitted with the Information Disclosure Statement filed on September 20, 2001. However, Applicant notes that the Examiner's initials indicating that the documents were considered do not appear beside each document listed on the Form PTO-1449. See MPEP §609. Applicant's respectfully request that the Examiner initial beside each of the documents to positively indicate the Examiner's consideration of the provided documents.

Examiner Interview

The Examiner is thanked for the courtesies extended to the undersigned during the telephone interview held August 4, 2008. Based on a discussion of claim 1, the Examiner suggested that amending the claims to recite details of the transmission of the claimed acknowledgement packet within the server environment may overcome the applied prior art. Applicants have amended the claims as suggested. The further substance of the interview is incorporated into the following remarks.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Miller et al., U.S. Patent No. 5,727,002 in view of Chalasani et al., U.S. Patent No. 5,274,782. The Applicant respectfully traverses.

Claim 1 defines over the applied prior art

Applicants' claim 1 recites, *inter alia*:

receiving, **at a network driver device**, a data packet transmitted **from a stack mechanism** in said server environment;

sending, **from the network driver device, an acknowledgment packet to said stack mechanism without sending said acknowledgment packet across said I/O bus;** and
after sending said acknowledgement packet, **transmitting, by the network driver device, said data packet across the I/O bus** in said server environment to said client

The applied prior art does not teach the sending and transmitting as recited in the above highlighted claim language.

The above claim language is neither disclosed nor suggested by Miller or Chalasani, individually or in combination. Claim 1 is allowable over the applied prior art. Claims 2-7 depend from claim 1, and also recite allowable subject matter. Applicant respectfully requests withdrawal of the rejections of claims 1-7.

Claim 8 defines over the applied prior art

Claim 8 recites, *inter alia*:

acknowledging a data packet by a driver mechanism in said server by sending an acknowledgement packet to a stack mechanism in said server, **wherein said driver mechanism is connected between said stack mechanism and an I/O bus in said server;**

The above highlighted claim language is not disclosed or suggested by the applied prior art. Neither Miller or Chalasani, either individually or in combination, disclose or suggest the above highlighted claim language. Claim 8 is allowable. Claims 9-14, which depend from claim 8, also recite allowable subject matter. Applicant requests withdrawal of the rejection of claims 8-14.

Claim 15 defines over the applied prior art

Claim 15 recites, *inter alia*:

an operating system having **a stack mechanism and a driver mechanism that communicate with one another via a communication path;**
a I/O bus coupled between said operating system and said network interface card, wherein said driver mechanism to transmit a data packet across said I/O bus to said network interface card and, **prior to transmitting said data packet,** said driver mechanism to send **an acknowledgment packet regarding said data packet to said stack mechanism via**

said communication path and without transmitting said acknowledgment packet across said I/O bus.

Neither Miller nor Chalasani, individually or in combination, disclose or suggest a the above highlighted claim language. Applicant respectfully submits that Applicant's claim 15 recites an apparatus that is structurally different from that recited in Miller and Chalasani, and, therefore, is allowable. Claims 16-21 depend from claim 15, and are also allowable. Applicant requests withdrawal of the rejections of claims 15-21.

Miller does not anticipate claim 22

Claim 22 recites, *inter alia*:

A ***network interface card*** comprising:
a mechanism to communicate across an I/O bus so as to receive data packets;
a memory device to store information regarding said received data packets; and
a mechanism to communicate across a network so as to transmit said received data packets to a remote system and to receive an acknowledgment packet from said remote system across said network.

In making the obviousness rejection of claim 22 at page 5 of the Final Office Action, the Office states that Miller discloses all of the features of claim 22 at FIGS. 2 and 5 and at column 5, lines 36-63 and column 13, lines 18-55. However, FIG. 2 illustrates a physical configuration which allows a server to communicate with one or more clients, and FIG. 5 is a simplified block diagram of a server. Similarly, the citations to the text describe features of a server not to the specific features of the claimed network interface card.

The Office asserts that Miller discloses all of the features recited in claim 22, and does not rely on Chalasani in making the rejection. This is an anticipation rejection, and Miller does not disclose all of the features of claim 22.

Alternatively, the Office has not made a *prima facie* case of obviousness with respect to claim 22 based on Miller or the combination of Miller and Chalasani. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.

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The Court quoting *In re Kahn* stated that "[R]jections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

Accordingly, Applicant respectfully submits neither Miller nor Chalasani, individually or in combination, disclose or suggest a network interface card as recited in claim 22. Claims 23 and 24 depend from claim 22, and also are allowable. Applicant requests withdrawal of the rejections of claims 22-24.

Conclusion

In light of the above discussion, Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Kenyon & Kenyon Deposit Account No. 11-0600. The Examiner is invited to contact the undersigned at (202) 220-4255 to discuss any matter concerning this application.

Respectfully submitted,

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